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ABSTRACT

The handbook outlines due process procedures for parents and surrogate parents of handicapped children in Vermont. Section I presents definitions of such commonly used terms as informed consent, free appropriate public education, and least restrictive environment. A chart follows (in section II) which matches educational procedures, parental rights, and school district responsibilities. Recommendations are offered in section III for mediating disagreements prior to requesting a due process hearing. The fourth section describes five separate options in the due process matter: independent evaluations, hearings, administrative appeals, complaints to the federal government, and lawsuits. Parental rights are outlined for each. The final section lists important considerations for the hearing, including preparation aspects and the child's status during the hearing. (CL)

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VERMONT SURROGATE PARENT PROGRAM

DUE PROCESS HANDBOOK

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INTRODUCTION

The following information has been designed to inform surrogate parents of their rights and responsibilities as well as to outline the procedures to be followed in executing these responsibilities. This outline was developed from a variety of resource material. The pamphlet entitled "A Guide for Parents and Advocates," which is included in your training manual, deals with the same information in more detail.

While procedures for requesting a due process hearing are clearly in place, a hearing was never intended to be the first and only way to resolve differences. The more closely parents and school personnel can collaborate and understand each other's context and goals, the less need there will be for third party intervention.

This handbook intends to emphasize the mutual respect and dependency that parents, the community, and local school districts must have with one another if handicapped children are to receive services which are beneficial and appropriate.

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SECTION I DEFINITIONS

Basic Staffing Team - (multi-disciplinary) is assigned the task of determining the need for special education services. This team determines eligibility by educational, psychological, and medical assessments or a combination of these. The educational assessment can indicate school achievement at 50% or less of grade level. For example, an 8th grader achieving at a 3rd grade level in math. The team's broad responsibility is to determine whether or not the child is handicapped and eligible for special education services.

The school personnel who assist in the development of the IEP may or may not be members of the Basic Staffing Team.

Comprehensive Assessment - is required whenever preliminary screening indicates that there exists a reasonable possibility that a child is handicapped and must be administered at least every three years. It should consist of:

(1) Appointment of basic staffing team.
(2) Determining schedules of tests and method of assessment to be used.
(3) Obtaining parental permission for initial assessments.
(4) Collecting information.
(5) Writing a report of findings.
(6) Determining eligibility for services.

Independent Evaluation - whatever the cause of your concern (you feel the entire diagnosis is wrong or you feel your child has a problem not described by the evaluations) if you want an expert to take a whole new look at your child, request an independent evaluation to be provided by experts outside of the school district. Make this request through your school district.

Informed Consent - the school district must notify parents explaining which evaluations will be given and why they think they are necessary before the child can be evaluated. You must give your consent before they can begin initial evaluation. Your consent indicates you understand all aspects.

Free Appropriate Public Education (FAPE) - means special education and related services which:

(a) Are provided at public expense.
(b) Meet the standards of the State Educational Agency.
(c) Include elementary and secondary.
(d) Are provided in conformity with an IEP.

IEP - means individual educational program prepared for each handicapped child in accordance with requirements of state and federal law. It is an educational tool designed to describe the special education/related services the child requires.

Least Restrictive Environment - handicapped children are to be educated with their normal peers unless clear evidence is available that partial or full removal is necessary.

Related Services - means the transportation and other developmental, corrective and support services which are required to allow a handicapped child to benefit from special education.

Advocate - one who assists or supports a consumer (parent or handicapped person).

TAE - Technical assistance and evaluation, the term applied to the Division of Special Education's district consultants.

SECTION II

EDUCATIONAL PROCEDURES	PARENTAL RIGHTS
1. a. School notifies the parents of possible special education needs and asks parents to consent to an evaluation of the child to determine eligibility for special education services,	Parents will be notified in writing of the school's intention to evaluate and will be notified of their rights in the educational process.
or	
b. The parents notify the school of possible special education needs and request the school to evaluate the child to determine eligibility for special education services.	If the parents feel that the evaluation should proceed, they must provide the school with their written, informed consent* for the pre-placement evaluation to begin.
2. The school schedules the pre-placement evaluation.	
3. Parents may discuss the proposed evaluation with school personnel and others.	Parents can discuss the evaluations, and methods recommended by the school district.
4. Comprehensive assessment* by the Basic Staffing Team* is conducted.	By Vermont Regulations, parents are not required to be members of the Basic Staffing Team. Many school districts have taken measures to include parents in this process, however. Clarify whether you are expected to be a member of the Basic Staffing Team or not.
5. The Basic Staffing Team makes a written report as to their findings. Eligibility for special education services is determined.	Parents will be notified as to whether their child is found to be eligible for special education services. Parents may agree or not with the results and determination. If there is a disagreement, the possibility of requesting an independent evaluation should be investigated. (See Independent Evaluation in Section IV).
6. The school district will notify the parent of the need for an IEP* meeting if eligibility is determined.	The IEP meeting should be held at a mutually agreeable time.
7. Parents should consult with friends, specialists and the school district, and review records in preparation for the IEP development meeting.	Parents have the right to see the records and have copies made at a reasonable cost. Parents should prepare for the IEP meeting.
8. The IEP development meeting will be held and attended by parents, school personnel, friends, and when appropriate the child. Components of the IEP include:	Parents may bring friends, advocates, or specialists with them and may invite the child. If parents would like certain school district personnel present, they should make this desire clear to the school district before the meeting.

* See Definitions, Section I

a. The child's present level of performance.	Parents can offer input for all the components.
b. Annual goals and short term objectives.	Parents can offer input for all the components.
c. Specific educational and related services.*	Parents can offer input for all the components.
d. Mainstreaming time in regular school activities.	Parents can offer input for all the components.
e. Dates for initiation of services and anticipated duration.	Parents can offer input for all the components.
f. Evaluation methods to determine, at least on an annual basis, how the child is doing.	Parents should understand these and may offer input.
g. A date for annual review between the school and the parents to assess the child's progress.	Parents should meet with the school district at least once a year to review the IEP.
9. IEP meetings can be held if any of the involved parties have reason to question the IEP.	Parents will be notified if the school anticipates a change in the child's placement. In addition, parents may request a meeting with the school district whenever there is a concern about the IEP and how it is working.
10. The IEP is implemented.	Written consent is required for placement of the child. Some school districts obtain this consent on the IEP form. Parents should thoroughly understand both the placement and the content of the IEP. If permission to place the child and implement the IEP is withheld, the child should continue to receive educational services in his/her current placement. If there is such a delay, immediate attempts to reach an agreement should be taken.

Please remember the law requires parent involvement in this process. Trust on both sides will enhance interactions which can only help and benefit the child.

SECTION III RECOMMENDATIONS FOR MEDIATION OF DISAGREEMENTS

Disagreements may result between parents and school district personnel over the issues of evaluations, evaluation methods, evaluation results, eligibility, placement, the content of the IEP, and services, either special and/or related. Before there is any thought of requesting a due process hearing, parents and school personnel should make every attempt to resolve their differences, and to understand each other's context and goals. What follows are suggestions which should be helpful to you in considering ways of resolving your differences without going to a due process hearing:

As soon as you realize you are uncertain about anything in the educational process, make your feeling known to the school district personnel-your child's teacher or your district special education coordinator. Sometimes just talking over problems in a very informal way can result in necessary changes.

You may want to contact your Vermont Surrogate Parent Program (VSPP) Regional Coordinator for assistance. She can help you to clarify your thoughts as well as to provide you with information and resources. Under certain conditions, she can even act as a mediator with the school district people.

You may want to request a more formal meeting with school district personnel (teachers, special education coordinator, principal) to discuss your concerns. You may wish to ask that you and school personnel come to this meeting with the issues in writing. Putting your concerns in writing is a very good way of helping you to clarify your thoughts.

If you are at loggerheads with one level of administration for the school district (principal, special education coordinator) you have the option of directing your concerns to the superintendent of schools or the local school board. Whenever you put your concerns in writing, always make a carbon copy and in your letter, specify a date by which you want a response. The Special Education Coordinator should always be carboned in.

If you have been through the local chain of command with your regional coordinator, or if you feel that the State Department of Education should be involved earlier, you may contact the State Department of Education, Division of Special Education and discuss your concerns with the Special Education Consultant assigned to your area. Although the TAE's* major responsibility is to the school district, they can be an excellent source of assistance and information at the proper time.

The suggestions contained in this section are not meant to be exhaustive. They are hints at alternatives to a formal due process hearing. One of the most important principles is to contact people who can be of help to you as well as lend you perspective. A surrogate parent with a disagreement should always begin this process by contacting the regional coordinator.

SECTION IV DUE PROCESS: SOME OPTIONS IN DETAIL

There are five separate courses of action described in this section. They are not described, however, in the order that they would necessarily be used. They are all actions available to you under the law, and they are described here for your consideration. The Vermont Surrogate Parent Program would not expect you to undertake any of these actions without first consulting your VSPP Regional Coordinator.

COURSES OF ACTION	PARENTAL RIGHTS
Independent Evaluation	If you want your child re-evaluated by experts outside the school system, and the school district agrees, then the school may provide you with names of other professionals who are qualified to conduct an appropriate evaluation. Usually when you, and always when the hearing officer requests an independent evaluation, it is provided at public expense. However, if the school challenges your request by seeking a hearing first, and if the hearing decision backs up the school's initial evaluation, then you must bear the cost, if any, of the independent evaluation. No matter who ends up paying for the new evaluation, any information obtained from the new evaluation must be considered in developing the IEP.
Hearing	The purpose of the hearing is to resolve irreconcilable differences between the school district and the parent. Rights at a Hearing: - You can present information about your child's needs, including an independent evaluation, if there has been one. - You can require particular school officials to attend the hearing and you can question them. - You must provide evidence five days before the hearing and you can prevent the introduction of any records or evidence that has not been made available to you at least five days before the hearing.

COURSES OF ACTION	PARENTAL RIGHTS
	- You can open the hearing to the public. - Your child can be present.
Administrative Appeal	If you disagree with the hearing officer's decision, the last opportunity you have to challenge your child's evaluation, IEP or program before filing a complaint or going to court is an administrative appeal. This appeal is a request to the State Board of Education to review the entire hearing process to make sure your legal rights were protected, all appropriate information was considered, and the proper decision was made. If the State Department of Education undertakes an administrative review of the case, they must complete their work and mail copies of their decision to all parties concerned within 30 days. That decision is final unless you want to challenge it thru a state or federal lawsuit.
Complaints to the Federal Government	If there are systematic violations of the law in your state or school district that affects a number of children (routine exclusion of children from school, inadequate evaluations based primarily on IQ tests) you should consider filing a complaint with the Federal Office for Civil Rights (OCR) or the Office of Special Education (OSE). To file a complaint, write a letter to OCR and OSE clearly stating the problem and including as much information as you can about the situation. Name all the people involved in the complaint so that OCR and OSE can interview them when they make their investigation. Send a copy of the letter to your State Department of Education and to your Senators and Congress person.
Lawsuits	If you have been unsuccessful in the hearing and appeal process and have not been able to get the school to provide the services you think your child needs, you should seek help from the State or Federal Courts. You are able to challenge in court any unlawful aspect of the evaluation, placement, and hearing process, as well as the school's failure to provide your child with appropriate special education services. A lawsuit

can result in a direct order being issued, requiring public officials to obey the law and provide you the services, evaluation or procedures to which you are entitled.

To file a lawsuit, you must first contact a lawyer to represent you. Legal services, private attorneys, Developmental Disabilities, and advocacy offices, or parent coalitions should be able to help you find an attorney to represent you. In some cases, attorneys can have their legal fees paid by the defendant, if they win or favorably settle the case, under the Civil Rights Attorney's for Awards Act of 1976.

SECTION V IMPORTANT CONSIDERATIONS FOR THE HEARING

Just a reminder. Protecting your image, putting someone down, or making an issue out of purely procedural issues, are all poor reasons to request a hearing. You, your school district, and certainly the child will all suffer from this course of action.

If, on the other hand you have: 1) an irreconcilable breakdown of negotiation with the school district, 2) irreconcilable differences over legal issues, 3) irreconcilable differences over factual issues, 4) paucity of resources where services and resources are indicated - you may have a reason to request a due process hearing. Once again, if you are a surrogate parent your regional coordinator should be part of this decision making process.

The hearing process should include the following:

Letter to Commissioner

The letter to the Commissioner of Education requesting a hearing should outline the specific problem(s) and attempts which have been made to settle the disagreement. You may seek legal assistance in preparing the letter.

Preparing your Case

Determine desired ruling

Determine state and federal regulations to support desired ruling.

Master case sheet.

Master chronology sheet

Witnesses

Expert Witnesses (5 days before the hearing you are entitled to know the names of the witnesses of the other party)

Pre-hearing Conference

Clarification of Procedures

The Hearing

The sequence of events

The Decision

You never know until the decision how the hearing went. You may feel strongly, but you don't know!!

PREPARING YOUR CASE

Two general rules in preparing for the hearing are to be thorough and organized. You must determine exactly what ruling you would like the hearing officer to make and prepare your case for this last step. You must determine from studying state and federal rules and regulations, possibly with the help of an attorney, exactly what the law requires you show in order to obtain that ruling.

Organizing Strategies:

Master Case Sheet: beginning with applicable regulations and rules down the left hand side of the page. The next column would be highly abbreviated facts of the case pertinent to each rule; third and fourth colums could list witnesses and exhibits you plan to introduce for each rule.

RULE	FACTS	WITNESSES	EXHIBITS	CHECK

Master Chronology Sheet: dates of all relevant happenings, including referrals, permissions, evaluations, letters, conferences. This would be a helpful reference sheet during the hearing and might be introduced as evidence.

Witnesses: Most hearings average 4-6 witnesses for each party. You should call only as many as you need to insure all vital facts are on the record and testified to by the person with the best first-hand knowledge of the matter.

You should consider preparing a list of possible questions that will be asked of each major witness. The master chronology sheet you've prepared should be consulted in preparing these questions.

Remember that your witnesses serve two functions:

1. Relating relevant facts,
2. Identifying documents or exhibits you wish to use.

Expert Witness: if a witness is to give her/his professional opinion, it is necessary to first establish "credentials."

Five Day Rule: The law requires disclosure (facts as they perceive them, the points of law they believe to favor them, the witnesses they intend to use, etc.) by both parties at least five days prior to the hearing, unless the parties choose to waive this right in whole or part. If there is an agreement to waive, be certain that it be in writing.

Exhibits:

1. Be sure adequate number of copies are available for each document.
2. Have all documents arranged prior to hearing according to the order in which you expect to introduce them.

3. Before the hearing begins, ask the Hearing Officer if the documents might be marked ahead of time and how they should be designated.
4. Be sure you have studied all your own exhibits carefully to see if they contain material possibly damaging to your case. You must show they are authenticated.
5. Obtain copies of, or access to, all the other parties' evidence as early as you can.

Pre-hearing Conference: In Vermont there is no requirement for a pre-hearing conference. It can be called at the discretion of the hearing officer to settle matters that need clarification.

The Hearing: The letter requesting a hearing should be drafted by you with legal assistance and sent to the Commissioner of Education. Notify school officials and the State Director of Special Education that you are requesting a hearing. In writing simply inform the officials about the particulars of your complaint. If you can, name the people involved in the original decision in your letter. Keep a copy of this letter and any response.

The hearing process must be completed within 45 days of the time your letter is sent, unless continuance is requested by either party and granted by the hearing officer.

The Typical Order of Events:

a. The Hearing Officer checks to insure all are ready to go - stenographer, tape, recorder, etc.
b. The Hearing Officer opens the hearing - states nature of matter, date, time, place of hearing, names of parties involved, stipulations agreed upon by the parties and asks for preliminary statements.
c. Opening statements - district first followed by parents.
d. District calls first witness.
e. Hearing Officer swears in the witness.
f. Counsel for district questions the witness.
g. Counsel for parents cross examine and/or question the district's witness.
h. Hearing Officer questions district's witness.
i. Repeat d-h for all district's witnesses, then for all parent's witnesses.
j. Hearing Officer can request additional information not submitted by either party.
k. Closing statements by parties.
l. Hearing Officer and counsel, still in the record, discuss when written agreements or briefs, if any, are to be submitted and when the decision is to be rendered.
m. Hearing Officer closes hearing.

Occasionally one or both parties wish to keep the hearing open for a few days for submission of supplemental evidence, the need for which may become apparent only during the hearing. Request this of the Hearing Officer.

On the basis of information presented at the hearing, the Hearing Officer will decide what he/she thinks is the appropriate decision regarding your child. The Hearing Officer is not limited merely to accepting or rejecting the school's position, but is supposed to order the school to provide whatever services are necessary for your child. The decisions of the Hearing Officer are final and must be obeyed by school districts, subject only to appeal to the State Department of Education or the courts.

The Child's Status During the Hearing: Unless the school and parents agree otherwise, the child involved in the complaint must remain in his/her present placement.

If the complaint involves an application for initial admission to public school, the child, with consent of the parents, must be placed in the public program until the completion of the proceedings.

EPILOGUE

Too often in instances when there is disagreement, anger and frustration confuse the issue. The issue should always be THE CHILD. Compromise, consideration, and assertiveness are all permissible if the focus remains on and is committed to THE CHILD.